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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/424,431	03/16/2000	JOHN W WONG	287300022USA	7974

7590 11/30/2005  
BRINKS, HOFER, GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, IL 60610

EXAMINER
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MENDOZA, MICHAEL G

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 11/30/2005

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**Group 3700**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/424,431  
Filing Date: March 16, 2000  
Appellant(s): WONG, JOHN W

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John W. Wong et al.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 9/08/05 appealing from the Office action  
mailed 6/24/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,485,833	Dietz	1-1996
5,067,494	Rienmueller et al.	11-1991
6,436,127	Anderson et al.	8-2002
4,815,459	Beran	3-1989
4,752,064	Voss	6-1988

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 15 and 23-38 are rejected under 35 U.S.C. 103(a). The rejection is set forth in prior Office Action, mailed out on 8 March 2005.

**(10) Response to Argument**

The Appellant's primary argument is directed towards the 35 U.S.C. 103(a) rejection using the secondary reference US 6,436,127 to Anderson et al., in which the Appellant state the rejection is improper because the reference is not within the Appellants' field of endeavor and is nonanalogous art.

The Examiner disagrees. The Anderson teaches a device that is used in the medical art. The device of Anderson also supply a treatment/therapy to a user in the form of radiation. For the reasons stated above the Examiner believes that device of Anderson et al. is within the field of endeavor and is analogous art.

The Appellant argues that there is no motivation to combine Anderson et al. with the combination of Dietz/Rienmuller. The Examiner disagrees. The combination of Dietz/Rienmuller teaches interrupting examination. Anderson et al. also teaches

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interrupting examination but in an alternate fashion using a "kill-switch". The kill-switch of Anderson et al. would be fully capable of performing the same function. It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only require the ability to so perform. It does not constitute a limitation in any patentable sense. Furthermore, it is well known in the art of medical equipment to include a kill-switch or an "on/off" function in case there is a malfunction or parameters are not met.

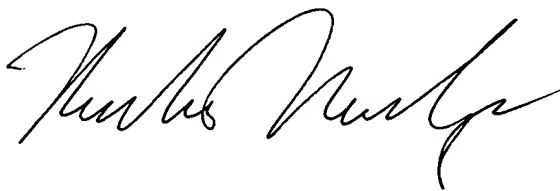
The Appellant requests clarification of the 35 U.S.C. 103(a) rejection citing but not relying upon U.S. Patents 5,111,809, 5,479,920, and 6,571,796. The references cited show evidence that is well known in the art to use one-way valves in a patient circuit for use in a inhalation part and in a exhalation part.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

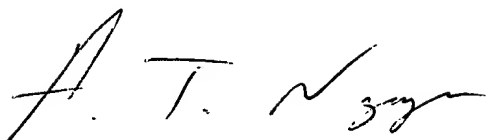
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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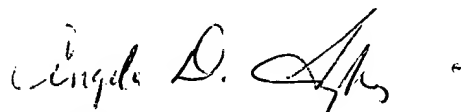
Michael Mendoza

Conferees:

A handwritten signature in black ink, appearing to read 'A. T. Nguyen' with a stylized flourish at the end.

Anh Tuan Nguyen

Supervisor 3731

A handwritten signature in black ink, appearing to read 'Angela D. Sykes' with a stylized flourish at the end.

Angela Sykes

Supervisor 3762